

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RAMON M. LIZ,
Plaintiff,

v.

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS, *et al.*,
Defendants.

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No. 22-cv-0396-JMY

ORDER

AND NOW, this 18th day of November 2024, upon consideration of the *Motion to Dismiss for Failure to State A Claim* (ECF No. 45) filed by the Wellpath HealthCare Defendants, and the *Motion to Dismiss for Failure to State a Claim and Lack of Subject Matter Jurisdiction* (ECF No. 47) filed by Pennsylvania Department of Corrections Defendants, all papers submitted in support thereof and in opposition thereto, it is hereby **ORDERED** that said Motions are **GRANTED** in part and **DENIED** in part as follows:

1. The motion to dismiss filed by Dr. Saeed Bazel, Dr. Jason Goldberg, Dr. Donald DeSantis, Dr. Matthew Riley, Physician Assistant Joseph Walsh, Physician Assistant Stephen Kaminsky and Wellpath, LLC, is GRANTED, and claims asserted against moving Defendants are DISMISSED from the Second Amended Complaint.
2. The motion to dismiss claims based on a theory of professional negligence (medical malpractice) filed by Defendant doctors, physician assistants, and medical providers is **GRANTED**, and all claims of professional negligence (medical malpractice) are **DISMISSED** from the Second Amended Complaint.

3. The motion to dismiss theories of ordinary negligence asserted against Defendant Correctional Officers Mark Kopcik, Patrick Curley, Steven Merrideth and the Pennsylvania Department of Corrections will be **GRANTED**, and claims asserted on a theory of ordinary negligence will be **DISMISSED** from the Second Amended Complaint.
4. The Clerk of Court is **DIRECTED** to terminate Dr. Saeed Bazel, Dr. Jason Goldberg, Dr. Donald DeSantis, Dr. Matthew Riley, Physician Assistant Joseph Walsh, Physician Assistant Stephen Kaminsky, Wellpath, LLC, and the Pennsylvania Department of Corrections as Defendants in this lawsuit.
5. Defendants' motion to dismiss Eighth Amendment claims of deliberate indifference under 42 U.S.C. § 1983 filed by Defendant Correctional Officers Mark Kopcik, Patrick Curley, Steven Merrideth and Dr. Anthony Letizio is **DENIED**.
6. Plaintiff may file a Third Amended Complaint within thirty (30) days of the date of this Order to reassert claims against Defendants who remain in this case. Plaintiff may not reassert a claim that has already been dismissed from this action. Any Third Amended Complaint must identify all defendants in the caption of the amended complaint in addition to identifying them in the body of the amended complaint and shall state the basis for Plaintiff's claims against each defendant. If Plaintiff files a Third Amended Complaint, his Third Amended Complaint must be a complete document that does not rely on the initial Complaint, the Amended Complaint, Second Amended Complaint or other papers filed in this case to state a claim. The Third Amended Complaint must include all of the bases for

Plaintiff's claims, including claims that the Court has not yet dismissed if he seeks to proceed on those claims. **For example, Plaintiff must include in his Third Amended Complaint the allegations supporting his deliberate indifference claims against Curley, Kopcik, Merredith and Dr. Anthony Letizio which have not been dismissed at this time, if Plaintiff seeks to proceed on those claims.** Claims that are not included in any potential Third Amended Complaint will not be considered part of this case. When drafting his Third Amended Complaint, Plaintiff should be mindful of the Court's reasons for dismissing the claims in his Second Amended Complaint as explained in the Court's Memorandum.

7. The Clerk of Court is **DIRECTED** to send Plaintiff a blank copy of the Court's "form complaint" for a prisoner filing a civil rights action bearing the above civil action number. Plaintiff may use this form to file his Third Amended Complaint if he chooses to do so.¹
8. Plaintiff may also notify the Court that he seeks to proceed on these claims rather than file a Third Amended Complaint. If he files such a notice, Plaintiff is reminded to include the case number for this case, 22-cv-396.
9. The Clerk of the Court is **DIRECTED** to send Plaintiff (1) a copy of this Memorandum and Order, and (2) a copy of the Second Amended Complaint (ECF No. 28) in this case.

¹ This form is available on the Court's website at <http://www.paed.uscourts.gov/documents/forms/frmc1983f.pdf>.

IT IS SO ORDERED.

BY THE COURT:

/s/ John Milton Younge

JOHN MILTON YOUNGE, J.